

IN THE CHANCERY COURT FOR DAVIDSON COUNTY TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, SITTING IN NASHVILLE

STATE OF TENNESSEE, ex rel. )

PAULA A. FLOWERS, )

Petitioner, )

v. )

XANTUS HEALTHPLAN OF )  
TENNESSEE, )

Respondent. )

NT  
No: 99-917-II

RECEIVED

JAN - 8 2004

Day. Co. Chancery Court

FILED  
2004 JAN 21 PM 1:15  
CLERK & HENRY CI  
DAVIDSON CO. CHANCERY CT  
D.C. AN

**ORDER CONVERTING REHABILITATION TO LIQUIDATION AND GRANTING  
PETITION FOR FINAL ORDER OF LIQUIDATION, DECLARATION OF  
INSOLVENCY AND PERMANENT INJUNCTION**

This matter came before the Court on the Motion to Convert Rehabilitation to Liquidation and Verified Petition for Final Order of Liquidation, Declaration of Insolvency and Permanent Injunction, filed by Paula A. Flowers, Commissioner of Commerce and Insurance of the State of Tennessee, ("Commissioner," or "Petitioner" or "Rehabilitator"), of Respondent Xantus Healthplan of Tennessee, Inc. ("XHT," "Respondent" or "insurer"), a Tennessee for-profit health maintenance organization, pursuant to Tenn. Code Ann. § 56-9-305(a), § 56-9-306, 56-9-307(d) and Tenn. Code Ann. §§ 56-32-212(a)(7) and 217. The Motion was set to be heard on January 8, 2004, with notice to Respondent and its sole director, Samuel H. Howard. Mr. Howard, through counsel, filed a Response to the Petition on December 15, 2003. Based upon the Motion and Verified Petition,

the exhibits thereto, the Response, testimony at hearing, argument of counsel, and the entire record in this case, the Court FINDS the Petitioner's Motion and Verified Petition for an Order of Liquidation and Permanent Injunction should be granted.

The Court further FINDS that:

1. This action continues properly before the Chancery Court of Davidson County, with jurisdiction and venue established by Tenn. Code Ann. §§ 56-9-104, 305 and 306.

2. Pursuant to Tenn. Code Ann. § 56-9-133, the Verified Petition and exhibits thereto have been received as prima facie evidence of the facts contained therein.

3. Respondent XHT holds a certificate of authority from the Commissioner to operate as a Tennessee HMO, thereby becoming subject generally to the standards of Tenn. Code Ann. § 56-32-201, *et seq.* XHT contracted with the State of Tennessee's TennCare Bureau in the Department of Finance and Administration to provide health care benefits to persons enrolled in the State's TennCare program. This contract was in effect through July 31, 2003, the effective date of the State's termination of the contract. XHT served such enrollees through July 31, 2003, after which date the enrollees were transferred to other plans. XHT derived all of its revenue from the State for TennCare enrollees.

4. Pursuant to an amendment to XHT's contract with the State (exhibit 3 to the Petition, which was fully executed after the filing of the Petition) XHT continues to be reimbursed for the run-off of valid claims related to the services to TennCare enrollees provided during the rehabilitation of XHT through the termination date. The Receiver anticipates that XHT will continue to receive sufficient funds from the TennCare Bureau to pay all reasonable administrative costs (including legal counsel, consultants, accountants and other professionals, and health care provider claims) associated with business operations for processing and administering run-off claims.

#### **I. STATUTORY AUTHORITY FOR LIQUIDATION.**

5. The Petitioner, Paula A. Flowers, is the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee and statutory rehabilitator of XHT. Pursuant to the Tennessee Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, et seq. (hereinafter, "the Act"), the liquidation of a domestic insurer, which includes prepaid health care delivery plans, is to be conducted by the Commissioner and her successors in office after her appointment as liquidator by the Court. Tenn. Code Ann. § 56-9-305 and 306. Pursuant to Tenn. Code Ann. § 56-32-217(a), any rehabilitation, liquidation, conservation or supervision of a health maintenance organization

(HMO) shall be deemed to be the rehabilitation, liquidation, conservation or supervision of any insurance company and shall be conducted under the supervision of the commissioner pursuant to the Act.

6. Tenn. Code Ann. § 56-9-305(a) establishes the requirements and means for converting a rehabilitative receivership into a liquidation of an insurer as follows:

[w]henever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the commissioner may petition the chancery court of Davidson County for an order of liquidation. A petition under this subsection has the same effect as a petition under § 56-9-306. The chancery court of Davidson County shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

Tenn. Code Ann. § 56-9-305(a).

7. Tenn. Code Ann. § 56-9-306 provides that the Commissioner may request liquidation, regardless of whether there has been any prior order directing rehabilitation of the insurer, as follows:

The commissioner may petition the chancery court of Davidson County for an order directing the commissioner to liquidate a domestic insurer . . . on the basis:

(1) Of any ground for an order of rehabilitation as specified in § 56-9-301, whether or not there has

been a prior order directing the rehabilitation of the insurer;

(2) *That the insurer is insolvent; or*

(3) *That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.*

Tenn. Code Ann. § 56-9-306 (emphasis added).

8. Among other grounds for liquidation pursuant to Tenn. Code Ann. § 56-9-306(1), Tenn. Code Ann. § 56-9-301 provides that the Commissioner may apply to rehabilitate (and, by virtue of Tenn. Code Ann. § 56-9-306, to liquidate) an insurer if, among other reasons, "[t]he insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public." Tenn. Code Ann. § 56-9-301(1).

9. For purposes of Tenn. Code Ann. § 56-9-306(2), an insurer is considered insolvent if:

(B) . . . it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities, plus the greater of:

(i) Any capital and surplus required by law for its organization; or

(ii) The total par or stated value of its authorized and issued capital stock;

. . . .

(D) . . . "liabilities" include, but are not limited to, reserves required by statute or by department

general regulations or specific requirements imposed by the commissioner. . . .

Tenn. Code Ann. § 56-9-103(11).

10. In addition, every HMO operating in the State must comply with the net worth requirements set forth in the Tennessee Insurance Code. See Tenn. Code Ann. § 56-32-212. If the net worth of an HMO falls below the statutory minimum, and has not been corrected, the Commissioner has the authority to suspend that HMO's certificate of authority, see Tenn. Code Ann. §§ 56-32-212(a)(7) and 216, and the further authority to petition this Court for rehabilitation or liquidation pursuant to Chapter 9 of the Insurance Code. See Tenn. Code Ann. §§ 56-32-212(a)(7) and 217. Specifically, if the net worth of an HMO falls below the statutory minimum, the Commissioner may petition for liquidation if

(C) The commissioner determines that an improper working capital or net worth status cannot be corrected within a reasonable time; or

(D) The commissioner determines that an organization is in such financial condition that the transaction of further business would be hazardous to its enrollees, its creditors, or the public.

Tenn. Code Ann. § 56-32-212(a)(7)(C)-(D) (emphasis added).

11. A declaration is authorized by Tenn. Code Ann. § 56-9-307(d), which states:

[a]t the time of petitioning for an order of liquidation, or at any time thereafter, the

commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

Tenn. Code Ann. § 56-9-307(d).

## II. GROUNDS FOR LIQUIDATION OF XHT.

12. The Commissioner has reasonably determined, based on the circumstances outlined in the Petition, that an order of liquidation of XHT is necessary, and has shown multiple grounds for liquidation pursuant to the foregoing statutes.

13. XHT is insolvent. As of March 31, 2003, <sup>the Commissioner submits that</sup> XHT had a negative net worth of \$74,582,492.00.\* See Affidavit of Special Deputy Chris Burton at ¶ 6 (attached as Exhibit 1 to Petition.) Accordingly, XHT is insolvent under Tenn. Code Ann. § 56-9-103(11).

14. XHT is below the net worth requirements set forth in Tenn. Code Ann. § 56-9-212. As recited in the Rehabilitation Order, prior to the initiation of receivership proceedings XHT was unable to maintain a positive net worth in the amount of \$7,617,742, as required by that statute. During the pendency of the rehabilitation, and currently, XHT has been unable to meet the net worth requirements of Tenn. Code Ann. § 56-32-212(a). Presently, XHT must maintain a positive net worth of \$8,820,978.00 to comply with Tenn. Code Ann. § 56-32-212(a). Pursuant to Tenn. Code Ann. § 56-32-212(a)(7)(C) and (D), due

\* On behalf of the Board of Directors, Mr. Sam Howard filed an action during rehabilitation proceedings that challenged the amount of XHT's negative net worth and asserted that the accurate amount of pre-rehabilitation debt was \$41,457,462. The Court had not concluded the hearing at the request of the parties. Later, the Petition for Final Order of liquidation was filed without resolution of Mr. Howard's contention that XHT's negative net worth was \$31,006,857 as of 3/31/03. The Court has reserved ruling on the actual negative net worth but finds XHT is significantly insolvent.

the cessation of XHT's business and its source of revenue, the Commissioner has reasonably determined that XHT cannot correct its net worth status within a reasonable time, and that the further transaction of XHT's business would be hazardous to its enrollees, its creditors and the public.

15. The Petitioner has shown and Mr. Howard agrees that it would be futile to further attempt to rehabilitate XHT. Presently, there are no offers to purchase XHT, and there is no reasonable possibility of selling XHT at a price sufficient to reduce the outstanding debt of the company to its creditors and provide sufficient capital for XHT to meet its statutory net worth requirements. In addition, and as reported to the Court in the Notice of Termination of Contractor Risk Agreement (filed 4/30/03), the Receiver was advised by the Tennessee Department of Finance and Administration that the TennCare Bureau would terminate XHT's Contractor Risk Agreement effective July 31, 2003. The contract termination was accomplished such that effective July 31, 2003, XHT no longer participated in the TennCare program. XHT enrollees have been reassigned to another health plan and the rehabilitator has continued the process of winding down the business and running off the claims. Except for those amounts payable by the State pursuant to the run-off of XHT's claims, XHT will have no further source of revenue to conduct business on an on-going basis. Further attempts to



rehabilitate XHT would substantially increase the risk of loss to creditors, policyholders or the public, and would be futile. See Tenn. Code Ann. § 56-9-305(a).

16. Because of its insolvency, its inability to meet its statutory net worth requirements, and its inability to generate revenue upon the cancellation of the Contractor Risk Agreement, the Commissioner has determined that XHT is in such condition that further transaction of its business would be hazardous financially to its creditors and the public. This determination, based on the financial condition of the company and the unsuccessful efforts to rehabilitate XHT to date, supports conversion of the rehabilitation into a liquidation under Tenn. Code Ann. § 56-9-305(a) and supports a Final Order of Liquidation under Tenn. Code Ann. § 56-9-306.

17. The Commissioner has reasonably determined, and the Court finds, that an order of liquidation of XHT is necessary. The Commissioner has reasonably determined, and the Court finds that there is no proper basis for continuing rehabilitation of XHT, where further efforts would be futile and produce no additional benefit to enrollees, providers, creditors, or the public. The Commissioner, as Rehabilitator for XHT, has reasonably determined, and the Court finds that XHT is insolvent. The Commissioner has reasonably determined, and the Court finds that XHT is in a condition which is hazardous

financially to its enrollees, providers, creditors and the public in general, as demonstrated by XHT's financial statements on file and the testimony of the Deputy Rehabilitator. The Commissioner further reasonably has determined that further attempts to rehabilitate XHT would substantially increase the risk of loss to creditors, enrollees, policyholders and the public, and would be futile. Mr. Howard agrees that further attempts to rehabilitate XHT would be futile.

18. The Commissioner requests a declaration of the insurer's insolvency, and the Court hereby declares based on the record that XHT is insolvent.

19. Specific provisions relating to the necessity of filing proofs of claims are appropriately included in the liquidation order as requested by the Receiver, because the liquidation order establishes a Final Bar date for all claims against XHT. During the rehabilitation, services to XHT have been authorized. Health care providers and other third-parties (including legal counsel, consultants, accountants and other professionals) have continued to provide medical and other services to XHT enrollees and to XHT. In the ordinary course of business, these providers and other third parties have submitted bills, invoices and/or claims to the Receiver and/or XHT for payment. For the purposes of liquidation, the Receiver appropriately proposes to treat such claims as administrative

expenses pursuant to Tenn. Code Ann. § 56-9-330(a)(1) and afford such claims "Class 1" priority. XHT will continue to receive sufficient funds from the TennCare Bureau to pay all reasonable administrative costs associated with business operations through July 31, 2003. XHT has continued to receive bills, invoices and/or claims after that date (the "run-off claims"), which are associated with administrative (including legal counsel, consultants, accountants and other professionals) and healthcare services rendered from April 1, 1999, through July 31, 2003, and may appropriately pay without disruption the undisputed claims to the extent TennCare supplies funds for this purpose.

20. Since the commencement of rehabilitation proceedings, the Receiver and XHT have received certain bills, invoices and/or claims from providers and other third parties which have been disputed. Most of these disputes have been resolved and paid in the ordinary course of business. However, other claims remain in dispute ("unresolved disputed claims"). The Receiver requests that, upon entry of this Order, all existing unresolved disputed claims and any additional claims against the estate of XHT be subject to the Proof of Claim process set forth in Tenn. Code Ann. §§ 56-9-311, 323, 324, and 327. Accordingly, the Receiver requests -- pursuant to Tenn. Code Ann. § 56-9-327(e) -- that the Liquidation Order (a) direct the Receiver to notify each such claimant in accordance with Tenn. Code Ann.

§ 56-9-311, and (b) direct each such claimant to submit a sworn Proof of Claim in accordance with Tenn. Code Ann. §§ 56-9-323 and 324 prior to the applicable bar date.

21. Due to the date of the hearing on the Petition, and the time necessary for sending out notices and receiving claims, the Commissioner amended the request for a final bar date at hearing to **May 14, 2004**, at 4:30 p.m., Central daylight time.

2004 JAN 13 PM 2:29  
CLERK OF COURT  
DAVIDSON COUNTY CHANCERY

FILED

22. Proof of claim forms shall not be required for any pre-receivership claims of XHT's provider creditors that were required by previous Order of this Court to be filed by October 2, 1999, and that were adjudicated in November of 1999, and partially satisfied (with *de minimis* provider claims paid in full), as described in the Receiver's Proposed Plan for Payment of Pre-Rehabilitation Provider Debt. In addition, pursuant to Chapter No. 994, Public Acts of 2000, Section 48, Items 3 and 7, a portion of many of these claims have been purchased by the State, in the approximate amount of \$20 million. The Receiver has maintained a database of all of these pre-receivership claims, and reasonably proposes that these creditors not re-submit these claims as part of the liquidation process. ~~The Receiver proposes to accept the pre receivership provider claims submitted pursuant to the September 28, 1999, Scheduling Order, together with any assignments of such claims (either full or partial) to the State of Tennessee, as "Class 2" claims for the~~

AC

~~liquidation proceeding. See Tenn. Code Ann. § 56-32-217(b) and~~ AC  
~~§ 56-9-330(a)(2).~~ These claims are fixed by law and claimants  
should be relieved of the responsibility to refile these claims  
by the Claims Bar Date established by the liquidation order.

23. Pursuant to Tenn. Code Ann. § 56-9-308(a), the  
Liquidation Order sets a coverage cancellation date within 30  
days of the date of entry of such Order, to the extent such  
coverage still exists.

24. Accordingly this Court FINDS that the Commissioner has  
demonstrated that the grounds for liquidation exist, under Tenn.  
Code Ann. § 56-9-305 and 306 and Tenn. Code Ann. § 56-9-217, to  
convert this action into a liquidation of XHT, and therefore  
there is good cause for immediate entry of a Final Order of  
Liquidation and Permanent Injunction of XHT.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that:

A. The receivership of Xantus Healthplan of  
Tennessee, Inc., (also referred to herein as "XHT" or  
"insurer"), created by Order entered March 31, 1999 for the  
purposes of rehabilitation, shall continue in full force  
and effect and that as of the date of entry of this Order  
of Liquidation, said receivership is converted to a  
receivership for purposes of liquidation. All powers,  
authority, and responsibilities of the Commissioner which  
are granted by the court's previous rehabilitation order,  
and which are not listed, amended, or augmented in this  
Liquidation Order, are hereby reaffirmed and continued in  
Liquidation;

B. The Commissioner of Commerce and Insurance for  
the State of Tennessee, and her successors in office, is  
appointed Liquidator of Xantus Healthplan of Tennessee,

Inc. for purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-305, 306, and 307 with all the powers conferred by law on receivers and liquidators of insurers appointed under those statutes. In addition to those powers specifically enumerated in this Final Order of Liquidation and by operation of law under Tenn. Code Ann. §§ 56-9-101 et seq. for liquidators of insurers, the liquidator shall have the power to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with Tenn. Code Ann. §§ 56-9-101, et seq.;

C. Pursuant to Tenn. Code Ann. § 56-9-307, the Commissioner, as liquidator, is authorized and directed (1) to take and continue in possession of all accounts, assets, monies, and property (both tangible and intangible) belonging to, held by and/or in the name of XHT both within and without the State of Tennessee, (2) to continue to be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the accounts, assets, monies, books and records of the insurer, wherever located, as of the date of entry of the rehabilitation order, and any further title or rights in property gained by the Commissioner by virtue of such receivership, and (3) that the Commissioner, as liquidator, continues to have the right to recover the same and reduce the same to possession and to administer them under the general supervision of the Court;

D. Pursuant to Tenn. Code Ann. § 56-9-307, the rights and liabilities of XHT and of its creditors, policyholders, providers, shareholders, members and all other persons interested in its estate shall become fixed as of the date of the entry of this Order of Liquidation, except as provided in Tenn. Code Ann. §§ 56-9-308 and 326, or otherwise expressly stated herein;

E. **Coverage Cancellation.** Pursuant to Tenn. Code Ann. § 56-9-308, all policies, including bonds and other noncancellable business, in effect at the time of issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation; (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; (4) the liquidator has effected a transfer of the

policy obligation pursuant to Tenn. Code Ann. § 56-9-310(a)(10); (5) the date proposed by the liquidator and approved by the Court to cancel coverage. The liquidator proposes and the Court hereby approves that all outstanding policies and coverage be canceled on **[date 30 days after Court enters the Order of Liquidation]**;

F. This Order of Liquidation shall terminate coverage at the time specified in Tenn. Code Ann. § 56-9-308(a) for purposes of any other statute;

G. The Liquidator shall have all the powers enumerated in Tenn. Code Ann. § 56-9-310, including the power to appoint a special deputy or deputies to act for her and to determine their reasonable compensation. One special deputy appointed by the Commissioner is Christopher Burton. The Special Deputy shall have all powers of the Liquidator as granted by this Order and as enumerated in Tenn. Code Ann. § 56-9-310. The Special Deputy shall serve at the pleasure of the Liquidator;

H. The Liquidator shall have the power to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as the Liquidator may deem necessary to assist in the liquidation;

I. The Liquidator shall have the power to fix reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court, and shall have power to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

J. The Liquidator shall have the power to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which she deems relevant to the inquiry;

K. The Liquidator shall have the power to audit the books and records of all agents of the insurer insofar as

those records relate to the business activities of the insurer;

L. The Liquidator shall have the power to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

M. The Liquidator shall have the power to enter into such contracts as are necessary to carry out the Order of Liquidation, and to affirm or disavow any contracts to which the insurer is a party. Further, the Liquidator shall have the authority and discretion to take all steps reasonably necessary to effectuate an efficient and orderly wind-down of XHT's operations and business without the disruption of medical care to enrollees or the orderly payment of claims and run-off claims. Such wind-down steps include, but are not limited to: the cancellation of provider contracts, the cancellation of leases and other professional services contracts, and the termination of employees;

N. The liquidator shall have the power to continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further;

O. The Liquidator shall have the power to prosecute any action at law or in equity which may exist on the liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the Liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation;



P. The Liquidator shall have the power to remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;

Q. The Liquidator shall have the power under Tenn. Code Ann. §§ 56-9-315, 316, and 317 to avoid fraudulent and preferential transfers;

R. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Commissioner or Special Deputy, nor shall it exclude in any manner any right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation;

S. **Notice.** The Liquidator shall give or cause to be given notice of the Order of Liquidation in accordance with Tenn. Code Ann. § 56-9-311 as soon as possible: (1) by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business; (2) by first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of liquidation; (3) by first class mail to all insurance agents of the insurer; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate;

T. **Claims Deadline.** All pre-receivership provider claims submitted to the Receiver pursuant to the September 28, 1999, Scheduling Order and adjudicated on November 16, 1999, ~~together with any assignments of such claims (either full or partial) to the State of Tennessee are deemed received and accepted as "Class 2" claims pursuant to Tenn. Code Ann. § 56-32-217(b) and § 56-9-330(a)(2), and shall not be re-submitted, reconsidered or re-adjudicated.~~

All bills, invoices and/or claims submitted to the Receiver and/or XHT pertaining to medical and other

authorized services rendered to XHT enrollees and to XHT from April 1, 1999, forward (including run-off claims), shall be treated as administrative expenses pursuant to Tenn. Code Ann. § 56-9-330(a)(1) and designated "Class 1" priority.

Any bills, invoices and/or claims pertaining to medical and other authorized services rendered to XHT enrollees and to XHT from April 1, 1999, forward (including run-off claims), which have not been paid or otherwise resolved as of the date of this Order, are hereby declared unresolved disputed claims and subject to the Proof of Claim process set forth in Tenn. Code Ann. §§ 56-9-311, 323, 324, and 327.

Pursuant to Tenn. Code Ann. § 56-9-327(e), and except as otherwise established by the Liquidator with approval of the Court, notice as described by Tenn. Code Ann. § 56-9-311(a) to potential claimants for all unresolved disputed claims (including claims that are subject to pending independent review proceedings pursuant to Tenn. Code Ann. § 56-32-226) or for any other claims incurred during the rehabilitation period shall specify and require such claimants to file with the Liquidator sworn Proofs of Claim in accordance with Tenn. Code Ann. §§ 56-9-323 and 324, **on or before 4:30 p.m., Central Time, May 14, 2004 (the "Final Bar Date")**, for purposes of participating in any distribution of assets that may be made on timely filed claims that are allowed in these proceedings;

The Receiver and her Special Deputy are authorized to pay outstanding and valid Proofs of Claim for medical and other authorized services rendered to XHT enrollees and to XHT from April 1, 1999, forward. If any Proofs of Claim are denied, rejected, or otherwise determined to be invalid, notice of such determination and appeal of such determination shall be made pursuant to Tenn. Code Ann. § 56-9-327. *If the amount of XHT's pre-rehabilitation debt becomes relevant to the priority of claims, or the distribution of any of XHT's assets, and the Court determines that there is a distributory authority to determine the appropriate amount of that debt, the Court will do so in accordance with the evidence presented at the October 2001 trial.* (Cln)  
U.) With notice given in accordance with Tenn. Code Ann. § 56-9-311, the distribution of assets of the insurer under Tenn. Code Ann. §§ 56-9-101, et seq. shall be conclusive with respect to all claimants, whether or not they receive notice;

V. **Protection from Suit.** Pursuant to Tenn. Code Ann. § 56-9-313, no action at law or equity or in arbitration shall be brought against the insurer or

Liquidator, whether in Tennessee or elsewhere, nor shall any such existing actions be maintained or further presented or prosecuted after issuance of the Order of Liquidation. All claims must be submitted through the claims process as set forth in the Act, and as further defined in this Order. Whenever, in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of the insurer;

**W. Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including but not limited to, Respondent XHT and its officers, directors, stockholders, members, subscribers, agents, contractors, subcontractors and all other persons with authority over or in charge of any segment of XHT's affairs, are prohibited and permanently enjoined from (1) the transaction of its business, (2) the waste or disposition of its property, (3) the destruction, deletion, modification, or waste of its records, databases or computer files, (4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof until further order of this Court, and (5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of any proceeding under this chapter; and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

**X. Cooperation.** Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, contractors or subcontractors of XHT, and any other persons with authority over or in charge of any segment of its affairs, are ordered and required to cooperate with the Commissioner in the carrying out of the liquidation. The term "person" shall include any person who exercises control directly or indirectly over activities of the XHT through any holding company, parent company, or other affiliate of XHT. Further, the term "person" shall include any person who exercises control or

participation in the activities of the XHT, such as through the record-keeping and computer systems operation relating to the activities of the XHT. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, documents, or other records or information or computer programs and databases or property of or pertaining to XHT and in his or her possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this liquidation;

Y. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets belonging to, held by, and/or in the name of XHT, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the liquidator, and are hereby instructed that the Liquidator has absolute control over such funds, accounts and other assets. The Liquidator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Liquidator's control without the permission of this Court;

Z. Pursuant to Tenn. Code Ann. § 56-9-307(e), the Liquidator shall make financial reports to the Court, which shall be filed within one (1) year of the Order of liquidation, and at least annually thereafter. Financial reports shall include the assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period;

AA. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

BB. No bond is required of the Commissioner as a prerequisite for the filing of this petition or entry of this liquidation order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101;

CC. That this Liquidation Order is permanent and a final order and entitled to full faith and credit pursuant to U.S. Const. Art. IV, § 1 and 28 U.S.C. § 1738 in the state and federal courts of each of the United States;

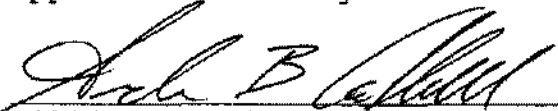
DD. That this Liquidation Order be posted on the Tennessee Department of Commerce and Insurance website; and

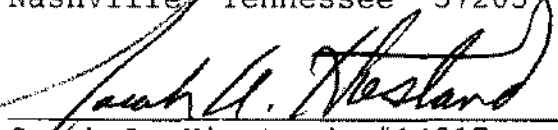
EE. The Commissioner may apply to the Court for any further orders and injunctive relief which may be necessary to implement the terms of this order, or in aid thereof, to which the Commissioner may be entitled. This Court retains jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate.

It is SO ORDERED, this the \_\_\_\_\_ day of January, 2004.

  
\_\_\_\_\_  
CHANCELLOR CAROL L. MCCOY

Approved for Entry:

  
\_\_\_\_\_  
William W. Gibson, #9049  
Andrew B. Campbell, #14258  
**WYATT, TARRANT & COMBS, LLP**  
2525 West End Avenue, Suite 1500  
Nashville, Tennessee 37203

  
\_\_\_\_\_  
Sarah A. Hiestand, #14217  
Senior Counsel  
**OFFICE OF THE ATTORNEY GENERAL**  
425 Fifth Avenue North, 2nd floor  
Nashville, Tennessee 37243-0496  
(615) 741-6035

**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing has been mailed, first-class, postage prepaid, on this 8<sup>th</sup> day of January, 2004, to the following:

**Attorneys for Xantus Corporation**

William B. Hubbard, Esq.  
201 Fourth Avenue, North  
Suite 1420  
Nashville, Tennessee 37219

Harlan Dodson III, Esq.  
Richard R. Dinkins, Esq.  
306 Gay Street, Suite 400  
P.O. Box 198806  
Nashville, Tennessee 37219-8806

Joseph F. Welborn, III  
Walker, Bryant, Tipps & Malone  
2300 One Nashville Place  
150 Fourth Avenue North  
Nashville, Tennessee 37219-2424

Robert W. Ritchie, Esq.  
606 West Main Street  
Knoxville, Tennessee 37902

**Attorneys for Other Interested Parties**

Robert C. Goodrich, Jr., Esq.  
SunTrust Center  
424 Church Street, Suite 1800  
Nashville, Tennessee 37219-2319

G. Gordon Bonnyman, Jr., Esq.  
Tennessee Justice Center  
211 Union Street, Suite 916  
Nashville, Tennessee 37201

Mary Jo Price, Esq.  
Vanderbilt University, General Counsel  
2100 West End Avenue, Suite 750  
Nashville, Tennessee 37203

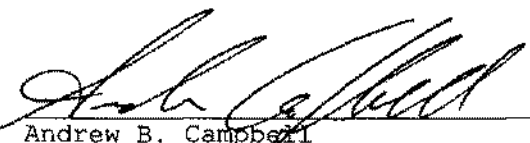
Darrell L. West, Esq.  
144 Second Avenue, North  
Suite 300  
Nashville, Tennessee 37201

Blakeley D. Matthews, Esq.  
511 Union Street, Suite 2700  
P.O. Box 190695  
Nashville, Tennessee 37219

Thomas J. Catliota, Esq.  
Andrew J. Love, Esq.  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037

**Counsel for the Special Master**

W. David Broemel, Esq.  
Boult, Cummings, Connors & Berry PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219

  
Andrew B. Campbell